



UNCTAD High-level International Investment Agreements (IIA) Conference 2018

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Investment is a key pillar of Spain's economic policy because of its significant contribution to create growth and jobs, both at home and abroad. More specifically, FDI in supports more than **1.3 million jobs in Spain**, while Spanish FDI sustains more than **1.6 million employments abroad**.

Foreign investment has helped Spain **emerge from the economic crisis** and now serves as a driver for a **more sustainable and inclusive growth**.

Spain has **72 IIAs in force** today, and **Spanish investors are active users** of this network and benefit from the legal certainty and protection it brings along. Conversely, as a **respondent State in several investment arbitration cases**, we have seen how some investors use IIAs in a way that was not originally agreed.

Therefore, we believe that **IIA is a very useful instrument** of investment policy that requires due attention and **modernization** in order for it to reinforce its usefulness.

Considering the five areas for the IIA Reform identified by UNCTAD in its 2015 "Roadmap" (Phase 1 of IIA Reform), what are the key issues that remain to be addressed?

We have **actively participated** in this process of IIA reform, both at **EU level**, where the main outcomes are the investment chapters of FTA between the EU and Canada, Vietnam or Singapur, as well as by **reviewing our IIA** model in line with the EU one, clarifying the investment protection standards and ensuring a high level of investment protection while preserving the Party's right to regulate and pursue legitimate public policy objectives.

In our new IIA model we maintain the investor-to-State dispute settlement mechanism but limiting its access, setting clearer rules on the conduct of procedures in arbitration tribunals

and **including a clear reference to its replacement when a multilateral mechanism enters into force**. Ensuring the **RBC** of investors is also a clear priority in our IIA.

Investment promotion and facilitation is also being addressed at EU and WTO level. Hence, among the five aims, the **key issue** that remains to be addressed is fostering **consistency of the system**, which is the main reason why we support and **appreciate UNCTAD's efforts in Phases 2 and 3**.

What progress has been made in the modernization of old-generation treaties (Phase 2 of IIA Reform)?

We have already made **significant progress** in some of our 72 IIAs in force, although we believe **Phase 3 will be the necessary step to complete the reform**.

Our new IIA model incorporates action options 1, 5 and 6 though provisions regarding bilateral bodies empowered to make joint interpretations, specifying the relation between coexisting IIAs and referencing global standards. **Actions 2 and 3 are already underway**, with negotiations **with several countries** already scheduled to amend treaty provisions, while some outdated treaties are already being replaced, the most recent one our IAA with Colombia. **Action 4**, consolidation of the IIA is also being carried out **via the EU agreements** that replace older BITs, such as with Mexico or Vietnam. **Action 8** has also been done, abandoning some unratified old treaties, while **action 9, terminating** 11 existing old treaties is also been done via the EU, specifically as a consequence of the **Achmea Judgement**. Finally, **action 7**, multilateral engagement, is precisely what we seek through our active participation in the **ICSID reform and UNCITRAL Group 3** processes and, of course, **here**.

What are countries' initial experiences with and priorities for Phase 3 of IIA Reform?

Opening a multilateral process of reform of the IIAs would be far more efficient than bilateral negotiations. Therefore, we believe that phase 3 is the most important one.

In this regard, we are totally aligned with the EU in our support of the creation of a Multilateral Investment Court in order to give consistency to the international investment framework. We encourage UNCTAD to continue analyzing this initiative and to propose a guide with practical recommendations.

What can be done to improve overall investment policy coherence for sustainable development?

Spain passed the **Action Plan for the Implementation of the 2030 Agenda for Sustainable Development in June 2018**. Additionally, we created a High **Commissioner** to fulfill the SDGs directly reporting to the Presidency. In addition, the Spanish government has acquired a commitment to **accompany all regulations** that are processed in the Parliament of **an impact analysis in the 2030 Agenda**.

Moreover, the **2017 National Action Plan on businesses and Human Rights** envisaged a consistent set of policies from different ministerial departments. Among them is a **Working Group on Financial Support to the Internationalization**, which is reinforcing provisions to guarantee the respect of a sustainable development by beneficiaries of all funds, initiatives and institutions, such as ECAs, that financially support Spanish investors abroad... on the condition that they fulfil all requirements regarding Human Rights and sustainability.

Concluding, the challenges presented today are a priority and we believe that the guidance and analysis of UNCTAD is very relevant to ensure coherence and coordination, both between policies at a national level, as well as internationally.